

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROD BITNEY**, on February 5, 2003 at 3:00 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Rod Bitney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Alan Olson, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Tim Dowell (D)
Rep. Hal Jacobson (D)
Rep. Jeff Laszloffy (R)
Rep. Scott Mendenhall (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Brennan Ryan (D)
Rep. Jim Shockley (R)

Members Excused: Rep. Daniel Fuchs (R)

Members Absent: Rep. Eileen J. Carney (D)

Staff Present: Glenna McClure, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Note: Vice Chairman Olson acted as chairman for this day.

Committee Business Summary:

Hearing & Date Posted: HB 443, 1/29/2003; HB 356,
2/3/2003; HB 470, 2/3/2003
Executive Action: HB 377, HB 424

HEARING ON HB 443

Sponsor: REPRESENTATIVE MICHAEL LANGE, HD 19

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 1.2 - 12.6}

REP. LANGE said that HB 443 is a bill to revise the Major Facility Siting Act. This bill does the following:

1. Renames the "certificate of environmental compatibility" to the "certificate of compliance."
 2. Revises the fee schedule on page eight and nine of the bill. Research has been done regarding the fees and has been reviewed by the Department of Environmental Quality.
 3. Economic impact and environmental impact are affected.
 4. Limits total review time for an application for amendment.
 5. Clarifies and simplifies the legal notice requirement. Legal notice was changed to be noticed in the county of the site. In the case of a transmission line that crosses more than one county, they would all be served notice.
 6. Limits the reporting paperwork for applicant. Presently applicants must submit copies to nearly every department in State Government.
 7. States the additional constitutional intent and clarifies the policy on page three. The last line "the balancing of these constitutional rights is necessary in order to maintain a sustainable quality of life for all Montanans" sends the message to business and industry that we respect them. It clarifies what the whole constitution section says.
 8. Clarifies when a MEPA document is required.
 9. Clarifies intent on pages 13, 14, 18, and 10.
- Take note of the Fiscal Note - it is zero. It does not cost the General Fund money. The purpose of the bill is common sense. He distributed a map of Priority Corridors with Federal Land.

EXHIBIT (feh25a01)

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 12.6 - 14.2}

Jim Mockler, Executive Director, Montana Coal Council, said that one project that will likely have a power plan connected to it is Otter Creek. This bill attempts to address power lines and pipelines.

Gail Abercrombie, Montana Petroleum Association, said that they are in favor of this bill.

Don Allen, Western Environmental Trade Association, said that this bill does a lot to deal with what needs to be done without lessening the standards.

Willie Duffield, Montana Association of Oil Gas and Coal Companies, said he was here to support this bill.

Jerry Driscoll, Montana State AFL-CIO, said that these changes are very necessary.

Tom Harrison, Spring Creek Coal, stated that they are in favor of this bill.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 14.2 - Tape: 1; Side B; 7.7}

Patrick Judge, Montana Environmental Information Center, said this bill weakens the Montana Facility Siting Act (MFSA). He distributed went over a brief history of the MFSA. This will be the 10th session that the Act will be weakened.

EXHIBIT (feh25a02)

John Wilson, Montana Trout Unlimited, said that the word "compliance" means that they are in compliance with the laws of the State of Montana. There are gaps in Montana law that don't cover certain instances of compatibility. He questioned if the state has adequate environmental protection in place for a nuclear power plant or nuclear waste depository to be sited in the state. He gave an example of a pipeline that would cross 11 trout streams. It was determined that there would be a significant adverse effect on the environment. The impacts would include whirling disease, disruption of spawning migration, and disruption of spawning habitat. In the Environmental Impact Statement (EIS), the Department of Environmental Quality (DEQ) made suggestions on how to reduce or eliminate the impacts although they have no legal authority to require those changes. This bill needs to be amended to accommodate the trout and wildlife in Montana.

Debbie Smith, Natural Resources Defense Council (NRDC) and Renewable Northwest Project (RNP), said that there is a growing constituency in the country for power development companies to

work with the public interest communities and local landowners when power plants are sited. The amendments to the MFSA are not necessary. She urged the committee to strike the language on page three, line 16 and 17, about balancing because it is not clear. She also questioned the effectiveness of eliminating providing copies to the affected state agencies. Page 13, Line 29 through Page 14, Line 6, indicates that you have to show a law or standard is going to be violated before the Department can deny a certificate. This could be a problem because it is possible that land can be damaged without violating a standard or law. She distributed testimony from the Montana Chapter of the Sierra Club.

EXHIBIT (feh25a03)

Matthew Leow, Montana Public Interest Research Group (MTPIRG), said that they support the comments by other opponents of the bill.

Informational Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 7.7 - 8.5}

Mark Lindberg, Governor's Office of Economic Opportunity, offered to be available for questions.

Tom Ring, Department of Environmental Quality, said that he was also there to be available for questions.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 8.5 - Tape: 2; Side: A; 2.4}

REP. BROWN asked Patrick Judge if he would agree that the "P" in MEPA was "policy" rather than "protection."

Mr. Judge said, "Yes."

REP. BROWN asked how many other states have an Environmental Policy Act besides Montana.

Mr. Judge said he did not know.

REP. MENDENHALL asked if it should be construed as compliance if a company wanting to open a plant in Montana complies with every law in the state.

Mr. Lindberg said, "Yes."

REP. MENDENHALL asked if it is not construed as compliance, what kind of message does this send to firms wishing to develop in the state.

Mr. Lindberg said that it sends a negative message.

REP. MENDENHALL asked Mr. Lindberg to share some of his experiences.

Mr. Lindberg said that they nearly lost the Roundup project due to the permitting processes, time involvements, dates and overall confusion of what needed to be done. Industry wants to follow the rules and regulations.

REP. RICE asked if the project on the Dearborn was going forward to put a pipeline under the river.

Mr. Judge said that the companies were amenable to the suggestions by DEQ and are going through with the project. The Roundup Project, however, is refusing to adopt suggestions by DEQ.

REP. PARKER said that under the current law, an Environmental Impact Statement would be automatic and, under the new language, there would only be an EIS if the Department finds that there is compelling evidence of adverse impact. He asked Mr. Ring if there would be any outlet for a local government agency or local landowner to appeal the decision if the Department found that an EIS was not necessary.

Mr. Ring said there is another part of the law that deals with an expedited review. The expedited review section allows for an environmental assessment as opposed to an EIS.

REP. PARKER asked what the opportunities were for public participation in the application process under the current law.

Mr. Ring said that opportunities for public comment are not spelled out in the law. Opportunities for public comment are in the decision-making process. The Environmental Policy Act provides the opportunity for public comment.

REP. MENDENHALL asked if the change in language would remove the requirement of filing with the Department.

REP. LANGE said that the changes to the bill do not affect that current process for a transmission line siting regarding public hearings.

Closing by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 2.4 - 7.5}

REP. LANGE said the last Nuclear Power Plant that was built in the United States was 10 years ago and cost over \$12 billion. The cost would prohibit a plant of that type being built in Montana. The Big Horn River Trout Fishery would not exist if it were not for the dam in the canyon. There are pipelines that go under rivers currently. The press is good at informing the public where projects are being considered. The purpose of this bill is not to weaken a law but to clarify the measuring stick that we use.

CONCURRENT HEARING ON HB 356 AND HB 470

Sponsor: **REP. CHRISTOPHER HARRIS, HD 30**

Opening Statement by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 7.5 - 12.9}

REP. HARRIS said that the two bills that he is proposing extend the Universal System Benefits Program (USB) in two different ways. HB 470 would create a three-year rolling average of the price. In the current law a static figure is used which is 1995 prices.

Under HB 356 the static 1995 figure is used and there is an addition for the benefits which creates a new beneficiary. The new beneficiary is the group homes for the developmentally disabled and organizations that serve them.

USB is an important program that serves low-income energy assistance and weatherization, cost-effective conservation programs, market transformation, and research and development in renewables.

Note: Testimony will be taken for each bill separately.

Proponents' Testimony HB 356: None

Opponents' Testimony HB 356:

{Tape: 2; Side: A; Approx. Time Counter: 12.9 - Tape: 2; Side: B; 4.3}

Debbie Smith, Natural Resource Defense Council/Renewable Northwest Project, said that they are on the fence regarding these bills. There is going to be a need for the USB programs for a long time into the future. They very much oppose the new beneficiary. Those organizations are currently eligible to apply for programs. This bill does not create new funding and therefore takes funds from the programs already in place.

Tom Schneider, Public Service Commission, provided a written copy of his testimony.

EXHIBIT (feh25a04)

Susan Good, representing herself, said that she was here when this program was started. In the bill, 69-8-402, Subsection 5, the utilities annual funding requirement for low-income energy assistance is established at 17% of the total funds collected. She suggested that the committee form a subcommittee to review these bills.

Patrick Judge, MEIC, rises in opposition to this bill. They do agree with extending the dates, but does agree with Ms. Smith regarding the distribution of funds to additional programs.

Doug Hardy, Montana Electric Cooperatives Association, said that they oppose the bill specifically but not USB. He would encourage the extension in HB 470.

John Fitzpatrick, Northwestern Energy, NWE, distributed a policy statement from NWE regarding these bills.

EXHIBIT (feh25a05)

Joe Roberts, Human Resource Development Council Directors, said they oppose opening this up to specific provider groups. There are currently group homes that get assistance and will continue to do so.

Proponents' Testimony HB 470:

{Tape: 2; Side: B; Approx. Time Counter: 4.3 - 7.3}

Patrick Judge, MEIC, said he is a proponent in part because he does see some potential problems with this bill. He went over the history of the USB program. He said that the wording on page one, line 16 leaves a gap in effective dates and recommend an amendment to correct it.

Opponents' Testimony HB 470:

{Tape: 2; Side: B; Approx. Time Counter: 7.3 - 13.2}

Debbie Smith, NRDC/NRC, said that they oppose this bill as she has discussed earlier. This bill opens a whole new administrative regime with no obvious benefit. There is no increase in USB funds.

Doug Hardy, Montana Electric Cooperatives, said that they also oppose this bill.

John Fitzpatrick, NWE, agreed with previous testimony.

Tom Schneider, PSC, distributed copies of the NWE Rate Schedule Revenue.

EXHIBIT (feh25a06)

Questions from Committee Members and Responses HB 356 and HB 470:

None

Closing by Sponsor:

{Tape: 2; Side: B; Approx. Time Counter: 13.2 - 14.7}

REP. HARRIS said that it would make sense to have a three-year rolling average. He urged that one way or another that the committee extend the USB.

EXECUTIVE ACTION ON HB 377

{Tape: 2; Side: B; Approx. Time Counter: 14.7 - 21.9}

Motion: **REP. MATTHEWS** moved that **HB 377 DO PASS.**

Motion: **REP. MATTHEWS** moved that **HB 377 BE AMENDED.**

EXHIBIT (feh25a07)

Discussion:

There was some discussion regarding the need to keep the companies accountable if this bill were passed.

Vote: Motion to AMEND HB 377 failed 7-7 with REPRESENTATIVES MATTHEWS, CARNEY, DOWELL, JACOBSON, PARKER, RYAN, and SHOCKLEY voting aye by roll call vote. REPRESENTATIVES CARNEY, FUCHS, JACOBSON, AND RYAN voted by proxy

Vote: Motion that HB 377 DO PASS carried 12-2 with REPRESENTATIVES DOWELL and SHOCKLEY voting no. REPRESENTATIVES CARNEY, FUCHS, JACOBSON, and RYAN voted by proxy.

EXECUTIVE ACTION ON HB 424

{Tape: 2; Side: B; Approx. Time Counter: 21.9 - 30}

Note: REPRESENTATIVE JACOBSON arrived in time for the vote on HB 424.

Motion: REP. LASZLOFFY moved that HB 424 DO PASS.

Motion: REP. PARKER moved that HB424 BE AMENDED.

EXHIBIT (feh25a08)

Discussion:

There was some discussion on the exemption for nonprofit organizations.

Vote: Motion on AMENDMENT (EXHIBIT 8) carried 13-1 with REP. BROWN voting no. REPRESENTATIVES RYAN, FUCHS, and CARNEY voted by proxy.

Motion: REP. BITNEY moved that HB 424 BE AMENDED.

EXHIBIT (feh25a09)

Discussion:

Mary Vandembosch explained the amendment to the committee.

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There was some discussion on the amendments.

Vote: Motion on AMENDMENT (EXHIBIT 9) failed 5-9 with REPRESENTATIVES BITNEY, OLSON, FUCHS, MENDENHALL, and SHOCKLEY voting aye by roll call vote. REPRESENTATIVES CARNEY, RYAN and FUCHS voted by proxy.

Vote: Motion to HB 424 DO PASS carried unanimously.

ADJOURNMENT

Adjournment: 5:15 P.M.

REP. ROD BITNEY, Chairman

GLENNA MCCLURE, Secretary

RB/GM

EXHIBIT (feh25aad)